

United States District Court

**EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

UNITED STATES OF AMERICA

§

§

vs.

§

Case No. 4:10cr155

§

(Judge Schell)

ROBERT J. SUTTON

§

REPORT AND RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE

Pending before the Court is the request for revocation of Defendant's supervised release.

After the District Judge referred the matter to this Court for a report and recommendation, the Court conducted a hearing on March 22, 2011, to determine whether Defendant violated his supervised release. Defendant was represented by Denise Benson. The Government was represented by Maureen Smith.

On September 18, 1998, Defendant was sentenced by the Honorable Paul E. Riley to one hundred and twenty months (120) months' custody followed by eight (8) years of supervised release for the offense of Conspiracy to Distribute Marijuana. On June 1, 2007, Defendant completed his period of imprisonment and began service of his supervised term. On July 19, 2010, this case was transferred to this Court and assigned to United States District Judge Richard A. Schell.

On December 13, 2010, the U.S. Probation Officer executed a Petition for Warrant for Offender Under Supervision. The petition asserted that Defendant violated the following mandatory condition: the defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within fifteen days of release from imprisonment and at least two periodic drug tests thereafter, as directed by the probation officer.

The petition alleges that Defendant committed the following acts: (1) Defendant admitted to smoking marijuana after submitting a positive urine specimen on July 8, 2009, at Lamar County

State Parole; (2) On May 22, 2010, Defendant admitted to the U.S. Probation Office he had used marijuana a few days prior; and (3) Defendant subsequently submitted urine specimens that tested positive for marijuana on November 11, 2010, and November 29, 2010.

Prior to the Government putting on its case, Defendant entered a plea of true. The Court recommends that Defendant's supervised release be revoked.

RECOMMENDATION

The Court recommends that the District Judge revoke Defendant's supervised release. Pursuant to the Sentencing Reform Act of 1984, the Court recommends that Defendant be committed to the custody of the Bureau of Prisons to be imprisoned for a term of nine (9) months with no supervised release to follow. It is also recommended that Defendant be housed in the Bureau of Prisons, Texarkana Unit.

After the Court announced the recommended sentence, Defendant executed the consent to revocation of supervised release and waiver of right to be present and speak at sentencing. Defendant and the Government also waived their right to file objections.

SIGNED this 22nd day of March, 2011.



AMOS L. MAZZANT
UNITED STATES MAGISTRATE JUDGE